

SUMMARY

Virginia Housing Commission

Short-Term Rental Workgroup

August 25, 2016, 1:30 PM

Room 3 , The Capitol

Delegate Chris Peace , Chair, called the meeting to order at 1:30 PM.

Members in attendance: Senator George L. Barker; Delegate David L. Bulova;; Delegate Barry D. Knight; Delegate Christopher K. Peace; Mark K. Flynn, *Governor Appointee*; and Laura D. Lafayette, *Governor Appointee*. Edward Mullen, *Airbnb Corporation*; David Skiles, *Travel Technology Association*; Erica Gordon, *Hilton Worldwide*; Eric Terry, *Virginia Restaurant & Travel Association*; Amy Hager, *The Bed & Breakfast Association of Virginia*; Sterling Rives, *Virginia Association of Counties*; Ron Rordam, *Mayor of Blacksburg, Virginia Municipal League*; Mark Haskins, *Virginia Department of Taxation*; Chip Dicks, *Virginia Association of Realtors*; Robert Bradshaw, *Independent Insurance Agents of Virginia*; Maggie Ragon, *Commissioner of the Revenue, City of Staunton*; Brian Gordon, *Northern Virginia Apartment Building Association*

Staff: Elizabeth Palen, *Executive Director of VHC*

I. Welcome and Call to Order

- **Delegate Christopher K. Peace, Chair:**
 - We have a lot to get through today, as we did last time. We're very grateful for Bob Bradshaw, who represents Independent Insurance Agents of Virginia, and Joe Hudgins, who will be the technical consultant to Bob, who will go through some homeowner policy information.
 - But insurance has been a topic that has come up a couple of sessions. And so we kind of delegated Bob, who is our resident expert, to examine the Airbnb policy—to my knowledge, they're the only hosting platform to have such an offering—and also compare that to existing homeowner policies, the need for commercial policies, etc. My understanding is that Bob had the opportunity to examine that Airbnb policy and has some reports on that for the workgroup, and other items of interest. So we appreciate all the time that you've spent offline working with various stakeholders to bring this presentation today.

II. Insurance Impacts

- **Robert Bradshaw, Independent Insurance Agents of Virginia:** Thank you, Mr. Chairman. Yes, insurance seemed to be a minor issue of interest all the way through this process.

- As a matter of introduction, my name is Bob Bradshaw, and I'm the president and CEO of the Independent Insurance Agents of Virginia. Independent insurance agents write over 80 percent of the commercial insurance in the Commonwealth. They write between 35 and 40 percent of the personal lines insurance. They range from some of the largest brokerage houses in the nation to the single Main Street office in Wytheville, Virginia. Independent agents represent more than one insurance company and average around ten carriers, but they can represent companies into the hundreds.
- As a means of explanation, a State Farm agent could not join my association because they represent only one company, and they do not have ownership of their book of business. With that said, we represent close to 500 independent insurance agencies and over a hundred insurance companies with over 6,000 professional employees in the Commonwealth.
- Today I'll make some general comments and observations about insuring short-term rentals. Then my associate, Joe Hudgins, will provide a brief overview of the standard homeowners policy in Virginia. And then I will address some areas where the industry is unsettled and where potential land mines are for consumers and then specifically address questions presented in advance.
- Generally speaking, those who list their homes, condos, apartments, rooms, what have you, don't believe that they're entering into a commercial enterprise. They've not sat down with their insurance agent to determine what financial property and liability exposures they're opening themselves up to. Very few of our members have indicated that they have had conversations with their clients about listing their property for short-term rentals. And for those that have, they generally recommend that they do not do so.
- In short, insuring your home, extra room, apartment, or even couch on a short-term rental basis looks like it's easy money, and it is, until something goes wrong. What happens when somebody trips and falls in your home and is seriously injured? And for that matter, [what] happens when you share someone's home and get hurt on their property? What happens when the people you rent your home to trash it for no apparent reason? What happens when the people that you rent your apartment to decide that they like your home audio/TV system so much they decide to take it with them? And what happens when you forget to ask if anyone is allergic to peanuts when you serve them those wonderful muffins and they end up in the emergency room at the local hospital?
- There are a number of policies that cover any number of the scenarios that we have been discussing in this task force. Some of the policies that come into play, of course, are your homeowners policy, rental, dwelling, and special provisions for Virginia, and special coverage for Virginia, dwelling policy, and of course your commercial general liability policy. And I do want to emphasize that the homeowners insurance policy is specific to Virginia. A fair number of people

have sent me some wonderful articles that are really pretty good if you live in Colorado or California, but Virginia has its own approved homeowner policy.

- While as we will see, your Virginia homeowner policy provides some limited coverage, one problem with this market is that generally speaking, the standard insurance market, those insurance policies that need to be approved by the Virginia Bureau of Insurance, do not like the short-term rental business. For example, Travelers and State Farm may cover your homeowners insurance until they find out that you rent your home on an occasional basis. They may not be able to cancel your policy midterm, but they certainly non-renew your policy in the future. As we will see shortly, you may have limited coverage in your standard homeowner's policy, but there are plenty gaps in coverage unless you accept that you are conducting a commercial enterprise and speak with your insurance agent about getting a commercial policy.
- Now let me ask Joe Hudgins, our technical consultant, who has worked on the insurance company side for close to forty years, to briefly walk through the standard homeowner policy approved in Virginia. This policy may be distinctly different than the policies approved in other states. He'll then outline what we learned about the Airbnb host insurance policy. I stress, however, that as far as we could learn, as the delegate mentioned, Airbnb is the only online service that purports to provide insurance for the hosts that sign up for their program, at least that we could determine. And there are many, many shared platforms on the Internet. We provided the standard homeowner policy, I guess one for public consumption, as it were. Everybody on the task force has a copy, and we'll give the standard policy to Elizabeth so she can upload it to the Internet so people will have access to it. Joe?
- **Peace:** Thank you. If you don't have a copy, I'm willing to lend you mine. I think we were trying to make extra copies. But we're certainly going to put it online if that will help everyone as we go forward in this process. Thank you, Joe.
- **Joseph Hudgins, Technical Consultant to Independent Insurance Agents of Virginia:** Good afternoon. My name is Joe Hudgins. I'm a lobbyist, and I teach CE for the Independent Insurance Agents of Virginia. I'm a technical consultant. I'm also on the Virginia Insurance Continuing Education Board.
 - I've been in the business since 1970, just to give you a little bit of a background. Just got through teaching a homeowners course, and Airbnb came up as a question from a couple of the agents in the class. So I hope I can give you answers. The problem is, talking insurance right after lunch, most of you are going to be snoring before it's over with.
 - To Bob's point, Virginia is a little bit unique in the country, and I think unique in a good way. The homeowners form that we use is the ISO, Insurance Service Offices form. Most companies use ISO. The current standard ISO form is the 2011 edition. Virginia is using the 1991 edition with some amendatory

endorsements attached to it. But basically, for homeowners coverage, there are five basic coverages under your homeowners policy. The first three deal with your property coverages, and the last two deal with liability. So let me talk about the property first.

- This will go quickly, because there's not a lot there. But Coverage A under your homeowner's policy is what covers your dwelling, your house, and a garage if it's attached to your house. And there is absolutely no business exclusion whatsoever for Coverage A. So if you rent your house through Airbnb, and the tenant decides they want to burn the house down, then it's covered, no questions asked. There is absolutely no exclusion, as long as it meets the test of two definitions. It has to be the insured location, which means the resident's premises that's listed on the policy and the homeowners declaration page. It can have a mailing address, but it also has to have a physical address. So as long as you meet the test of the insured location and resident's premises, the house burns down, it's covered.
- The second coverage is Coverage B, which is *other structures*. It used to be called *garages*. But if you have other structures on your property—whether you have one, whether you have ten, whether you have fifteen—you have a specific amount of coverage for that. Typically, it's 10 percent of your dwelling coverage. So if you have a half-million-dollar house, you'll have fifty thousand dollars for your other structures. There is absolutely no coverage for that under the rental. So if you were to rent your garage apartment to Airbnb, a person, there's absolutely no coverage for that, unless you lease it to them as a garage. If you lease it to them as a garage, then there would be coverage. So you have an Airbnb person who's staying next door to you, and you go through Airbnb and rent them your garage for them to keep their cars in, that would be covered.
- Confused you enough? Okay.
- Coverage C is personal property. That's where it gets a little bit dicey. Let me make sure that I don't make a mistake here. It will cover personal property owned or used by an insured while it's anywhere in the world. At your request, we will cover personal property owned by others while the property is on that part of the resident's premises occupied by an insured. So if you're not there and not occupying it, then their stuff's not covered. It limits business property to \$2,500. So if you have property in your house that can be deemed only used when you have an Airbnb person there, that property is limited to \$2,500. I believe you can buy back coverage for that . . . if the company doesn't know what you're doing.
- Personal property not covered. The policy says that we do not cover property of roomers, boarders, and other tenants, except property of roomers and boarders related to an insured. It doesn't cover property in an apartment regularly rented or held for rental to others by an insured, except for that \$2,500 sub-limit that you have. So you might rent to someone through Airbnb, and you have a downstairs apartment or an upstairs apartment. You might still be there. Business

data is not covered. So if you have records that you keep for your Airbnb business so that you can properly report that income to the IRS, which would not be covered.

- Let's see, that's pretty much it for the property, except for one major thing. Under personal property in the Virginia homeowners policy, coverage for personal property—it's what's called *named peril*. So it has to be a specific thing to happen for it to be covered, like windstorm, hail, theft. Theft is not covered—your personal property, your stuff is not covered for the peril of theft if it's from that part of a resident's premises rented by an insured to other than a tenant. So you rent your spot, you rent your house. And you come back, and you open the door, and you now have an empty house, that's not covered.
- That's pretty much it for the property stuff. Liability is kind of simple. If you look at the homeowners policy in Virginia, there is a business exclusion under the homeowners policy for liability. What that says is that there is no coverage for a business. Then the next paragraph says that there is no coverage arising out of the rental or holding for rental of any part of any premises by an insured. But to give lawyers some work, it goes on and it says—I shouldn't have said that, should I? This exclusion does not apply to the rental or holding for rental of an insured location on an occasional basis if used only as a residence.
- When I read that in a class, and somebody asks me, well, is it covered to rent your house, my answer to that question would be no. I'm serious. It's a subjective thing. A judge in Roanoke could say occasional is ten days. A judge in Norfolk could say occasional is two days. A judge in Fairfax could say occasional is fifty days. So the coverage is there, but it will be litigated. You can count on that.
- Again, there's no coverage if you rent a house that is not an insured location. Let me give you an example of that. You might have someone who has a house in Richmond and a house at the river. For some reason, they forget to renew their insurance on their house at the river, and they rent that out through Airbnb. That's no longer an insured location, and there wouldn't be any coverage. But that would be true for anything.
- Let me see what I've missed here. Under the homeowners policy under the liability section, you do have some limited coverage for damaged property of others. It's sub-limited in the policy of \$500. And again, the question here is if—the policy says we will pay at replacement cost up to \$500 per occurrence for property damage to property of others caused by an insured—so if you could be found somehow liable. But then it goes on to say we will not pay for property damaged, property owned by or rented to a tenant of an insured or a resident in your household. So that would probably get litigated also because that's not a very clear, concise statement. When this policy was written in 1954, we didn't contemplate all this stuff. Again, it talks about not covering a business. Occasional rental is not a business.

- That's pretty much it. That's what the Virginia homeowners said. Now there is a Virginia amendatory endorsement that goes to this, but that doesn't change anything that I just said.
- We had a chance to look at the Airbnb policy yesterday or day before yesterday. That's your basic GL policy. It's written through Syndicate out of Lloyd's. It provides liability for the host. It's primary. It's not excess. It's a primary liability policy that it provides to the host. It has some things in it that would apply on a worldwide basis, but it's there. I can't think of anything other—it looks okay to us. If you have any questions, ask Bob.
- **Bradshaw:** Okay, here are a couple of points. First, I do want to thank Ed for stopping by the office. Believe me, we had a long list of questions that we were looking forward to reviewing, the Airbnb policy. And then we had the opportunity to ask questions from their general council.
 - But we were pretty generally impressed with the policy. Having said that, though—and again, Airbnb is the only one that is out there with a policy, so maybe we should be talking about the implications of couchpotato.com or whatever it is, the other rental places.
 - One difficulty I guess—and we've talked about this with Ed—is Airbnb does believe that their policy is proprietary. It's a marketing benefit of going through Airbnb, so they do not make it public. They do put information up on the website so you can look at that and say, generally speaking, here are the coverages. However, that does put an agent in a particular problem. Without the opportunity to look at it, your insurance agent must assume that none exists.
 - While Lexington Insurance provides a homeowner gap coverage policy for short-term rental hosts, and Allstate looks like it has a gap coverage endorsement for current insureds, the prudent insurance agent will try to find the insurance policies with endorsements to fully cover somebody who wants to get into the short-term rentals. It will be up to the host to decline to duplicative coverages, and the agent may very well ask the host to sign a statement that they've declined particular coverages. But certainly if they sign up for Airbnb and they're getting X, they don't need to buy a supplemental X policy.
 - Sort of the positive is that you do want the consumer to have the broad discussion with their agent, go back to Airbnb and say okay, where's the duplicative coverage, what do I need, what do I not need. It's almost easier with the other organizations or other online deals because they offer no insurance, and so you would be providing the insurance in total.
 - Consumers should not be surprised at the different directions they get from captive agents and independent agents. We talked to several captive agents who said that if any of their clients called asking about short-term rental coverage through their existing coverage, the client would be non-renewed at renewal

time. Independent agents have a little bit more leeway in counseling the client about short-term rental insurance. But what we're aware of, all short-term rental policies will be written on a surplus lines market and not the admitted market regulated by the Bureau of Insurance. To reiterate, there is no definition of *occasional* when it comes to short-term rentals and when you would be considered to be operating a business. Some insurance companies may have more latitude than others.

- Finally, there is no requirement that people or companies buy any insurance. The prudent person will. Having said that, as we found out, only 20 percent of the people in Louisiana have flood insurance. Between 15 and 20 percent of the homeowners in California have earthquake insurance. How many people in the short-term rental business have anything other than their homeowners insurance, and how many don't have a homeowners or rentals or dwelling insurance? Again, generally speaking, those who truly believe that they are commercial entities and they would like to protect their property and assets will have insurance, but there is no requirement for them to do so.
- In preparation for this presentation, we received several questions which I'd like to address. First, in a Dillon Rule state, like Virginia, there must be authorizing legislation. The introduced legislation only states that localities aren't prohibited from adopting ordinances requiring insurance coverage, but it doesn't affirmatively authorize that. I'll defer to Mr. Flynn, self-identified attorney, and Ed and others. But if the Code is amended that provides that the locality has the option to exercise the authority to do something, then it seems to me the locality could exercise their authority to do something. It would be limited authority, but they could do so.
- The other question was localities don't have authority under enabling legislation for zoning, local tax, or BPOL to regulate insurance coverage and few areas of local regulatory concern are covered within Title 55 of state code [the Code of Virginia]. What's the logical, legal source of local government authority for regulatory control mandates with respect to insurance coverage for specific uses of property?
- I would respond, while the Bureau of Insurance insurance company representative and us could be consulted in terms of what types of insurance are appropriate, in this case it's not the insurance that's being regulated, but the entity. We don't know how you would mandate the adequate coverage for the couch, apartment, home, or mansion and the disparities of each. For example, does the couch, apartment, condo, or home come with a pool? Is a meal included or not? Certainly the owners of the Comfort Inn, or the Hilton, for that matter, have different measures of adequacy of coverage than does the Barboursville Bed and Breakfast.
- What type of insurance is the General Assembly talking about? What type of liability, property, contents of the lodger, personal injury, death of the lodger,

damage by the lodgers to the homeowner's property, contents of the house? What basis, claims made or occurrence? Homeowners insurance coverage, commercial liability coverage? Can the individual who is a tenant of a dwelling unit and operating it as a limited residential lodging obtain insurance coverage for the lodging use? What would be covered by the renters insurance policy? The legislation allows renters to be operators of a limited residential lodging use.

- I would say that Joe's presentation should have addressed many of these concerns. It seems appropriate that if insurance would be mandated that it would be mandated on the liability side, protecting the consumer. That seems to be the intent of the legislation proposed last year. It would be up to the host, as it were, to decide how much of their own assets/property they would want to protect. Whether the insurance is written on an occurrence- or claims-made basis would not be material. Virtually all commercial policies these days are written on a claims-made basis.
- Is there an existing type of insurance that can be obtained by an individual homeowner or tenant for their use? If so, what is it called, how much does it cost, will it cancel out coverage under other policies? Is such insurance sold as a stand-alone policy, or is there a rider or endorsement or some other type of policy?
- I would say potentially all of the above. As we mentioned, there are some homeowner gap coverage policies that exist. You could possibly purchase a homeowner policy and a commercial policy for your rental activity. Depending on the property, a dwelling policy might be appropriate. You could get a short-term rental policy. How much does it cost? Allstate's gap coverage policy is an endorsement to the existing homeowner policy and only adds \$50 to the conventional homeowners policy. I'm not aware that this endorsement, however, is available in Virginia yet. A commercial policy could easily cost into the thousands of dollars.
- Having said that, we get back to the risk. Are you ensuring a couch, room, apartment, condo, or single-family dwelling? How much of your assets do you want to protect? What's your exposure, and what's the limit of liability that you want?
- The next question was, currently if an individual homeowner has homeowners insurance or a tenant of a dwelling has renters insurance, will an insurance company cancel that policy if it finds out that the property is being hired out as limited residential lodging and not simply as someone's personal residence? It's doubtful that they can cancel a policy in midterm, but it's likely they will be non-renewed. One of my concerns is that the insurance companies really don't want to know what the consumer is doing.
- This is one of the last questions. Why can't the statute just mandate that any entity that operates a hosting platform for this type of use must provide a

minimum amount of \$500,000 liability insurance coverage for such use and say exactly what type of insurance is being referred to? I would respond certainly that the statute could indeed do that, of course. In some cases, it would be way too much, and in other cases not nearly enough. Our members want to provide insurance that the customer needs and that's appropriate to their risk and tolerance for risk. Of course we would hope that the consumer short-term rental participant would act prudently.

- If the hosting platform is not involved, shouldn't government let homeowners work this out with their own insurance providers and mortgage companies and keep local governments out of it? I would say that's certainly our preference and that the consumer short-term rental hosts act prudently, recognize that they are conducting a business, and communicate with their hopefully independent insurance agent on the right amount of coverage.
- Chip Dicks did have a particular question related to the difference of dwelling policies. We'll talk to Chip specifically about that. Elizabeth, I'll send you a copy of the presentation so you can upload it.
- If there are any questions, be happy to have Joe or I answer them.
- **Peace:** Thank you, Bob and Joe. Appreciate your time. State your name, please.
- **Edward Mullen, Reed Smith, representing Airbnb:** Edward Mullen with Reed Smith, representing Airbnb. Thank you, Bob and Joe, for the presentation. I'd like to sort of ask a clarification question. I enjoyed very much talking with you all earlier this week and over the last couple of weeks.
 - The question regarding application of homeowners insurance to short-term rentals is not a new one. Short-term rentals have been going on for a long time. Whether or not homeowners policies do or do not and to what extent they cover those short-term rentals is not a new question. So for a long time, independent insurance agents and others have been counseling cautious homeowners who are renting out their house either at the beach all summer or on some other basis, as to whether or not their homeowners covers the activity. And if not, should they be getting a rider or a commercial policy or something like that.
 - I guess this is the question. Throughout all of that, there have been less cautious or less informed, or whatever, folks who have not counseled with their independent insurance agent and have just let it roll on their homeowners if it works and sort of take that risk. In that view, the liability policy that you all had an opportunity to investigate, you would construe that as a positive entrant to the marketplace. While independent insurance agents who don't have the ability to inspect it—and I can get into that as needed—every time might say to the very cautious person, “Well, we can't see it, so you might still want to get a commercial policy.” For that other class of people who are either not cautious or

uninformed or who have been rolling dice over time, is it anything but a very positive thing in your view, having reviewed it?

- **Hudgins:** Yes, it's a positive thing, sure.
- **Bradshaw:** I think as we expressed to you, for some reason, I don't know why, Airbnb thinks that this should not be broadcast to the world. I understand the marketing issue of it, and I think other platforms could be chomping at the bit to get a copy of the policy and implement it there. I have no idea what the premium is. I would say it's not petty cash. But certainly what Airbnb provides should give consumers quite a bit of comfort. It'll give the agent a little bit of heartburn because I can't see it, but they can look at what it says on the website. One of our big primary issues is it went back and forth on whether it was secondary or primary. We looked at the policy; it's very much primary. So as long as Airbnb renews the policy on December 31st of this year, we're good to go.
- **Mullen:** All right. Thank you.
- **Bradshaw:** It does expire.
- **Mullen:** I understand. I feel confident somebody will make a good choice there.
- **Peace:** Delegate Bulova, did you have a question?
- **Delegate David Bulova:** Thank you, Mr. Chairman. I think I was able to keep up with about 75 percent of that, which is pretty good. I think you hit on a very important point which with respect to liability and protecting one's own property, then you're dealing with the risk tolerance of the actual property owner. The part that I'm most concerned about is the consumer who for whatever reason gets into a bad situation or has exposure to liability, and making sure that they're covered.
 - From the Airbnb standpoint—and again, you'll have to kind of refresh my memory on how this works. So Airbnb provides general liability coverage. At what point does that coverage not apply? Who would have to do what in order for you not to be covered by that general liability coverage from Airbnb, in which case you'd be thrown into the uncomfortable position of having to figure out where to go next where it wouldn't be seamless?
- **Bradshaw:** I'll jump in quickly and so potentially and maybe not possible, but maybe there is a gap in the Airbnb policy. We didn't see it. But if there was a gap, then I think that could be a problem. However, if it was indeed covered, then it's covered up to the limits of the Airbnb policy, which would be, what is it, a million—
- **Mullen:** It's a million per occurrence. Ten million aggregate.
- **Hudgins:** It's like any other situation. You answer the questions, I guess, on the app when you go through Airbnb. And as long as you're not concealing anything,

committing a fraud, and answering the questions honestly, then the Airbnb policy is like any other GL policy. It has the standard exclusions that apply to those situations that any policy would. And you would have up to a one million dollar coverage per location per year.

- **Bulova:** Right. So if I can, Mr. Chairman, following up on that, I guess that's my concern. So let's say the property owner doesn't answer honestly. And so let's say the property owner is at fault in this case. Does that general liability still cover the consumer who had nothing to do with providing the wrong information to Airbnb in the first place?
- **Bradshaw:** The Airbnb policy covers that host. The person in the Airbnb, the person in the location, if they're sued for liability, then their homeowners policy would protect them.
- **Male:** You're saying that somebody who is renting a host property gets hurt.
- **Bulova:** Correct.
- **Bradshaw:** Oh, I'm sorry.
- **Bulova:** So if I'm in the host property and I get hurt, what I understand is that the Airbnb's general liability would kick in. Correct? And I guess my question on top of that, then, is, let's say that it turns out that the owner operated under false pretenses. Would that consumer still be—would that person who is using that service still be covered under the general liability, or would they not?
- **Bradshaw:** Possibly not. But that would be the case in any insurance policy for anything. That wouldn't be just an Airbnb. If you're in an automobile accident and you've lied on your application for your automobile coverage, then possibly that person you hit wouldn't have any coverage. But to answer your question, right, if the Airbnb policy does not provide coverage for whatever reason, then the renter would not have coverage.
- **Bulova:** Mr. Chairman, if I could follow up. I guess two final questions, and I'll kind of throw them out there at the same time. Are there examples where you would have something like what Airbnb is providing with a hold harmless clause for the person who's using this service? Notwithstanding whether the property owner has provided misinformation or lied on their forms, that consumer would still be covered since it wasn't their fault. Is there a model out there that would say that, yes, you can go after the property owner because you lied? But in terms of protecting the person who was injured that that policy would still apply.
- **Bradshaw:** Not that I'm aware of. Let me say this. Again, we're getting into the what-ifs and the lawyer realm. If the Airbnb policy doesn't apply, the homeowner may have concealed something from Airbnb, but they haven't concealed anything possibly from

their homeowners carrier. So if it's considered an occasional rental, the homeowners liability policy would pay for the injured tenant.

- **Bulova:** I have one last question. Let's say it did come down to litigation with respect to Airbnb's coverage liability. Where would something like that be filed? Would that be done locally? Where and how would that be vetted out?
- **Bradshaw:** It depends on the contract. I didn't see that in the contract, so I can't speak to that. Sometimes it says it'll take place in the jurisdiction where it happened. I wouldn't think it would say it's going to take place out of the country, but I don't know. That would be in the contract somewhere.
- **Mullen:** Mr. Chairman.
- **Peace:** Mr. Mullen.
- **Mullen:** Mr. Chairman, Edward Mullen with Reed Smith. The action in that case would be of the renter against the host. And they'd also be going after the policy. If the host was fraudulent and lied or something like that, that renter would be back in the same boat as a renter going through any other hosting platform or any traditional means where the homeowner has not obtained a commercial policy. Of course there's no legal requirement to obtain a commercial policy. That guest would have rights against the homeowner. Maybe he's a very wealthy homeowner; maybe he's not. But in any event, you would be back in the bucket of all the other rentals in the world that are occurring at people's homes and have for a long time.
- **Peace:** Any further questions, Delegate Bulova? Anyone else have questions? Yes, Mayor.
- **Ron Rordam, Virginia Municipal League:** This is Ron Rordam, Virginia Municipal League. This isn't really a question; it's more of an observation. It's a word that we keep on hearing and a definition that's really not out there—and that's *occasional*. We hear it in zoning. We hear it in taxation. We hear it in insurance. I think that's something we're going to have to grapple with, what is occasional. I just wanted to throw that out.
- **Peace:** And you're saying that just as follow-up in terms of whatever our draft may include in terms of number of days, weeks, months rented, that for purposes of insurance, that would be deemed to be occasional. Is that what you're saying?
- **Rordam:** That's it, yes. It sounds like that is very important in a lot of these different issues.
- **Peace:** Okay. Thank you. Yes, Joe.
- **Hudgins:** I need to add to that. I don't mean to be speaking for the Bureau of Insurance, but I know that the Virginia homeowners, what we refer to as—it's the

minimum standards regulation, Regulation 17. The Bureau of Insurance can't approve a change in the form if it's deemed to be more restrictive than the current form. The current form uses the word *occasional*. If you took out the word *occasional* and put *ten days* in there, they would deem that more restrictive. Because like I said, a judge in Norfolk might say twenty. A judge in Roanoke might say five. So it would take legislation to change that word.

- **Rordam:** And that was my point, follow-up. Thank you for that. I appreciate it.
- **Peace:** Mr. Terry.
- **Eric Terry:** Eric Terry with the Virginia Restaurant, Lodging & Travel Association. I have two questions. As you said earlier, Bob, you looked at Airbnb. Have you gotten any information from any of the other significant platforms like HomeAway or any of those? Have you been able to look at other ones out there?
- **Bradshaw:** My staff went online and we looked at everyone, couchpotato.com, or whatever they are, looking for anyone that provided a type of insurance. I've heard offhand that there are 300-and-something other platforms. What we were able to identify, Airbnb was the only one. That's what my staff's been able to identify. We couldn't find one that had a supplemental insurance.
- **Terry:** Okay, that's really all.
- **Peace:** Okay, thank you. I have a couple questions. Is it possible to be a host and not have homeowners insurance? In other words, when you go to register to be a host on Airbnb, do you have to state whether you have homeowners insurance?
- **Bradshaw:** That would be a question for Airbnb. You don't have to have homeowners insurance. I don't want to spread that around.
- **Peace:** Well I appreciate that. There's the sort of caveat emptor quality to all of this. I don't know the answer. That's why I'm asking.
- **Mullen:** Mr. Chairman, Edward Mullen. I don't know the answer either.
- **Peace:** Well let's get an answer to that. I think that's important. If we're trying to identify a gap, if we're trying to say where does the policy from Airbnb or any other platform that has such a policy overlay or fill in, mesh, however you want to say it, if there's nothing to mesh to, then it's only the Airbnb policy that is potential payer, essentially, in that circumstance.
- **Bradshaw:** Mr. Chairman, may I caveat and say I don't know the answer to that, and we can find it out. But in the case of the Airbnb policy, what you should really—the question is maybe for another platform, as in you don't provide anything at all. Do you require folks to have homeowners or commercial liability insurance? In this case, because it's a primary policy, it's there whether they have homeowners or not.

- **Peace:** Thinking forward, going back to the mayor's question, I think we may want to consider in terms of a draft legislation that in order to be qualified as a hosting platform that that might be a requirement. Now that wouldn't be a problem for Airbnb, but that might be an issue for these others.
- **Mullen:** Mr. Chairman, Edward Mullen with Reed Smith. You might run into difficulty under federal law requiring a hosting platform to carry an insurance policy. The legislation that you carried allowed for localities to put an insurance requirement on hosts that could be satisfied by hosting platforms, but it was voluntary.
- **Peace:** Sure, and I appreciate that. You understand what my point is. And their point was that the way that that was drafted, maybe the localities would need to have a "may do this," as opposed to the negative inverse, which was there's nothing that prohibits you from doing that. Sterling, would that be true? Was that your interpretation of what their presentation was in terms of local government and the Dillon Rule and enabling legislation?
- **Sterling Rives,** VACO representative: Well, as with most Dillon Rule questions, the answer is—it depends. But I would read the negative implication in the legislation that went through as providing a good argument that localities have that authority.
- **Peace:** But maybe it would be clearer if stated—
- **Rives:** Oh, it could definitely be clearer.
- **Peace:** Okay. Well that's what we want to work on. That's sort of the purpose of all this, so I appreciate that.
- **Bradshaw:** Mr. Chairman, that also might be threading a particular needle. Not to cast dispersions on Chris Lago and the fine insurance companies that he represents, but the standard homeowners insurance companies don't appear to want to write short-term rental. As soon as they find out that that's what you're doing, they say we want to get off, we'll non-renew you. And then your only option is to go to the surplus lines market. And there's limited availability there. So the legislature can say here's what you need. But if it's not provided by the market, then that might be difficult.
- **Peace:** Sure. But it's something we need to consider and evaluate in the process. I thought your presentation about just the basic homeowner was a great overview. It caused me to call my agent and say what do I have. The dwelling house, the garage attached, that's sort of the baseline. They're good under their standard form policy. The personal property sort of caveats or exclusions and caps, I think that's where there was some consumer protection concerns that people may have—the \$2,500 limit, the \$500 limit. But there were further exclusions from that as well, which may not provide coverage. So if you have an at-home business of any kind, I think what you're saying is you need to examine your homeowners policy, potentially look at premises liability coverage, a commercial policy, or other types of gap policies. Is that an accurate statement? You would recommend doing that? Any at-home business?

- **Bradshaw:** And seeing your independent insurance agent.
- **Peace:** Sure.
- **Bradshaw:** Absolutely. A homeowners policy was never designed to cover a business.
- **Peace:** Right, right. Yes, Mr. Terry.
- **Terry:** Eric Terry. What about if someone is not a homeowner, but actually has a renters policy or—
- **Bradshaw:** It's the same thing. The policy I described covers the HO3, which is if you live there. It covers the renters policy. It's the same for the condo policy. So all of the generic homeowners, the same thing.
- **Terry:** But you would get those specifically for them.
- **Peace:** I don't know what the short-term policy is that you refer to that's currently in the market that's not an Airbnb product, but I'm familiar with rental insurance as a former renter. Is there such a thing as renters insurance that's portable? In other words, that presupposes you're renting in a particular space that's fixed, not renting in the short-term manner. In other words, if that covers me, my personal property, those things, it's not portable. It's affixed to that particular rental unit. Is there such a thing in the market, contemplate that?
- **Bradshaw:** There is, but it hasn't been sold for about thirty years. It's called the personal property floater and personal articles floater and a CPL policy. Back before homeowners coverage, it took six policies to cover what the homeowner policy covers. That's basically what you have.
- **Peace:** That's interesting. So if I'm traveling the world and staying in a lot of these short-term places, you're telling me that I might be able to procure a policy that would cover me in those endeavors and experiences.
- **Bradshaw:** If you could roll back thirty years. There are probably not any companies now that even know how to do that.
- **Peace:** But it's an interesting concept, at least to me. I may be the only one that finds it interesting.
 - In terms of what I think the delegate was asking about and not getting into sort of civil procedure and diversity citizenship and a mountain of controversy and whether we're in state or federal court or all these things—because we'll likely have the circumstance where there's someone from New York and someone from Virginia, and something happens that's more than the seventy-five thousand dollars or whatever it is. There's basic common law that I would imagine that you would still be able to claim. If there's a duty and you breach the duty, there

are damages, it's really a matter of whether you can have the insurance cover and pay as opposed to just being personally liable. And if that owner of that residence has the ability to pay, then basically you get a judgment and an award that can't be satisfied. Is that your understanding too? In the absence of anything else, there is the common law?

- **Bradshaw:** Yes. That would even happen when you exhaust the limits of your insurance.
- **Peace:** That's a good point.
- **Bradshaw:** So at some point, depending on the horrendous accident, you could go through the Airbnb policy, the homeowner policy, your umbrella policy, and then, congratulations, your paycheck.
- **Peace:** Right.
- **Amy Hager, *Bed & Breakfast Association of Virginia*:** I have one quick question. I'm so sorry. I just want to make sure that it's clear. The only policy out there that would cover the traveling public, I guess kind of to follow up what you were asking, is a true commercial liability policy, if that's what the homeowner chose to get. Right?
- **Bradshaw:** That would certainly be the optimal thing is if you're getting into this business, talk to your agent about getting a commercial policy. Again, if you're going to rent your home out, and let's say you do that—I'm just going to go out there and say three times a year—that's definitely in my opinion within the realm of occasional. So you absolutely would have liability coverage if the person you rented to was harmed and you were negligent. Because, remember, it's a liability policy, and it only pays if the judge bangs the gavel and says you're liable. But if you do it on more than an occasional basis, whatever that may be, then you're correct, you need a commercial policy.
- **Male:** Similar to what you were saying—I've stayed in a lot of B&Bs. I prefer that. And very often you'd find the owners living in a separate property like behind the B&B. I think that would have to have a commercial policy because it's not a premises insurance. The homeowners insurance would not then cover that B&B, if I'm correct.
- **Hager:** That kind of leads into my next question, actually. What if you're a renter, so I'm renting a house. I have renters insurance, and the owner obviously has whatever landlord insurance they have to have. If I'm a renter, and then I decide to rent out that property on Airbnb, would any of those insurances cover that situation?
- **Bradshaw:** Your renters policy is a homeowners policy. And you would have the same liability coverage as if you owned that house.

- **Price:** And to your point, that's a point well made and had been contemplated during the session in terms of the ability to sublet and those issues. Thank you for asking. That was Amy Hager from B&B Association.
 - I think it would be helpful, and maybe this would be just like one page that you could again provide. I hate to give you more work. But with collaboration with maybe Erica and Amy, there's obviously a lot of interest in the consumer protection piece of the renter of that site. I would like to know what the coverages, caps, limits are of the hotel and the guests of the hotel and the B&B as well, comparing apples to apples or apples to oranges. I know there's been a lot of talk about we should treat Airbnb or the industry itself the same as hotels. I know that comment has been made. So I would just be curious in terms of insurance, how we would sort of look at those things.
- **Bradshaw:** Aren't hotels limited by legislation?
- **Peace:** My understanding is it is. But I think it would be good to just have like a rundown so everybody's on the same page as we're looking at those who are consumers of lodging in the various forms and what their expectations may be.
- **Bradshaw:** I would think that the hotel liability would be considerably less than what Airbnb supplies.
- **Peace:** I don't want to speculate, so I'm just asking if you could put a little cheat sheet together. That would be very helpful.
- **Mullen:** Mr. Chairman, Edward Mullen. One clarification on Ms. Hager's first question. I think the question was, absent going through Airbnb with the policy that we've been talking about, in other situations the only way to be sure would be a commercial policy. Is that an accurate reflection of the question?
- **Hager:** Yes. So are you guys covering anything for the guest in this aspect?
- **Mullen:** I think there are incidental guest protections. But the guest's real protection is the liability policy as against the host or the homeowner. And again, I guess that's the root of the Chairman's question on the statutory limitations for hotel liability for guest items and things like that, which is stated in statute.
- **Peace:** Thank you very much for the presentation. I appreciate all the questions and indulgences.

III. Bed & Breakfast Impacts

- **Peace:** The next item on our agenda is the bed and breakfast impact of this emerging industry. Misty Williams, who is with L&L Hospitality Group: Inns of Distinction, is here. Thank you for coming. Appreciate you sharing some of your perspectives with this workgroup.

- **Misty Williams, *L&L Hospitality Group: Inns of Distinction*:** Thank you for the introduction. I am Misty Williams. I work with L&L Hospitality Group. We are a small corporation based in Woodbridge, Virginia. The owners have five properties. One is in Florida, but the other four are in the state of Virginia. Here is our property. We have two in downtown Fredericksburg—the 1890 Caroline House and the Richard Johnston Inn. We also have the Ashby Inn and Restaurant. That’s in Fauquier County in Paris, Virginia. The newest property is the Inn at Evergreen. It’s on the Evergreen Country Club in Haymarket, Virginia. Those are our four properties here in the state of Virginia.
 - They went into business purchasing properties in the late ’80s. This is when they first started acquiring B&Bs. They also own other businesses, but this is kind of their little hospitality branch.
 - So just a little bit about me. I was hired in 2013 to help them out with their property, so I work directly for the owners of the properties. They don’t live onsite of any of their properties. Each property has their own either general manager or on-site innkeeper that either lives there or lives off property. I am in kind of charge of making sure all the properties are up to legal business standard codes, so ABC laws, insurance, inspections, making sure that we’re renewing everything annually or biannually, whenever those renewals come up. I also help with budgeting, updating the websites, ensuring that all the staff on the properties have the licenses that they need, so food handler certifications. I’m also the treasurer of the StayVA organization here, the Bed and Breakfast Association of Virginia.
 - So you can see that 1984 is when they started looking at the properties and purchasing them. And then it gives a little bit about the StayVA. And we also started in 1984. I think that’s when a lot of the B&Bs actually started in Fauquier and Loudoun County. We have some that have been around for about thirty years now. You can see that we do have about 450 legal bed and breakfast/inns in the state of Virginia, with an addition of cabins, cottages, farm stays. So it’s definitely a growing industry. There are a lot of different aspects to the small lodging industry.
 - One of the things that makes us a little different from the Airbnb is we ensure that all of our zoning is up-to-date, that we are a legitimate business. We want to make sure that our guests are covered if there are any injuries. So it’s not just for the owner. They want to make sure their properties are covered if it was to burn down. But they also want to make sure that they’re doing everything legally—filing their taxes, making sure that we have all the occupancies correct. So if a fire marshal did show up, we wouldn’t get shut down and that if there were any injuries, we were acting within the laws.
 - You can see we also do provide workmen’s comp for any of our staff on the property. All of our properties maintain all the normal insurances, the health

inspections are up-to-date. We pay all of our state and local taxes as needed. We all do have business licenses.

- This goes into a little bit more of the ABC licensing. One of our properties is a full-service restaurant, so we have an on-site and off-site alcohol license. That's a little bit different than for B&Bs. For a bed and breakfast in Virginia, it's only a \$35 license annually to have your ABC license. And that allows you to serve beer, liquor, wine, or mixed drinks to your guests on your property, in their rooms, on your terrace—whatever is your actual property.
- One of the organizations that we are a member of is Select Registry. With that, one of the things that they require from us is to have all the licensing that's required by the state that we're in to be part of the Select Registry. They do their annual inspections of the properties. Those are some of the things that they request. Also, the BBAV. To become a member, they request proof of your licensing, proof that you have insurance.
- We do have occupancy limits in place. We know that we can't do a wedding of over a hundred people due to fire codes. We don't run into the issue of there being 150 people on the property, and something gets called in, people get injured. We stay within those regulations.
- As far as VDOT codes and everything, we do have signs on the main streets for some of our properties, especially in Fauquier County because it is in a very remote area of Virginia. That's something that we pay for annually. They're very good about wanting money, so they always send us the forms. We just have to renew it and make sure that the signs are still easy to read and that they haven't fallen down or anything of that nature.
- As far as the winery insurance events and farms, we have an on-site organic farm at our one property. So we're actually going through the process of getting it coded as organic. It takes about five years, so that's something that we've been working on. That's another interesting aspect of just trying to make it legal and being able to actually call it organic.
- Again with the licenses, we make sure that all of our properties have all the licenses that they need. The inspections. As far as insurance and things, it depends on if anything changes drastically in our building. If we do any building updates, if we overhaul the property, or if anything changes with insurance requirements, we would actually have people come and investigate the property. Our biggest concern is our property in Paris, Virginia, because we're so remote there's no fire department within thirty minutes. There's no large body of water. So we have to make sure we're really covered with our fire insurance on that.
- All of our properties have to have a food handling license because every property does fix breakfast for the guests that stay. You can see a little bit of the information, too. Starting in July 2018, there are some changes that are going to

be happening with that. Five rooms or less, if you don't want to be inspected by the health inspector, you have to advertise that you're not inspected, that you're an uncertified kitchen. Being a food handler, it's actually a pretty easy process depending on what level you need. You can go online. Thirty-five dollars. It's good for a couple of years. If you need different levels, it can range up to \$200. Again, that's good for usually two to five years depending on what food handling class you've taken.

- For our properties, it's really nice because everyone uses the exact same reservation system. So it's easy for us to account for taxes, payments, make sure we're getting everything in on time as far as our state and local taxes. The guests can book online; they can call us and book over the phone. We also use OTAs and GDS, so online travel agents, Travelocity, Expedia. We use bedandbreakfast.com. It actually helps funnel all of our reservations for us. So we're getting payments in directly from them into our banking account, and then they notify us when the payments come through. Any guest who books over the phone, it goes right through our reservation system as well. So it's all in one space. We take credit cards, cash, checks. And it's kind of funny that we still take checks. Some people will mail it to you.
- Because we're a small corporation, all of our taxes are paid monthly via our accounting department. That's something I don't have to deal with, which is nice. I just make sure that all the software is up and running. They actually submit the state and local taxes. They also help with any bills. A lot of the bills go directly through them. So I approve everything and send it to our Accounts Payable Department, and they pay all the bills for us there.
- Some of our advertising venues, like I said, we do have OTAs for all of our properties. I don't necessarily say these are the best ones, but these are just some examples. Bedandbreakfast.com is one of our largest ones. We used to advertise on I Love Inns. That seems to be a little bit of an older avenue, but that still is out there. We are listed on Airbnb as well. All of our properties do have at least one room listed on Airbnb because it is a free listing. We do use that.
- We have had a nightmare with Airbnb, so we try not to really promote that as much. We had a guest stay with us who ended up breaking a window, destroying property. The owners tried to file a claim through the insurance, and felt that it was too much of a hassle, and ended up just paying for the problem themselves. We just asked that guest to not come back and stay at our properties. So we list there, but we haven't had good luck with them.
- Of course all of these other avenues for advertising do take a commission. We would love our guests to call us directly, book on our website so we're not paying the 20 percent commission.
- Some of the other associations that we're a member of, so the StayVA, Select Registry, the AIHP. I think that's the website for the independent-

innkeeping.org. That's the newest bed and breakfast association. Of course everyone's on Facebook, Instagram, Pinterest, Google. People always want to see your pictures, your recipes, your weddings, what you're doing. And then Virginia.org is a really good site for us, as well as Fredericksburg, Visit Fred. That's one of our best websites in the Fredericksburg area for those properties.

- That's kind of it.
- **Peace:** Thank you very much for your presentation.
- **Williams:** You're welcome.
- **Peace:** I'll say I've eaten at the restaurant at the Ashby Inn and recommend it highly to anybody.
- **Williams:** Good, good. Thank you.
- **Peace:** Much like I recommend the Jefferson Hotel here in Richmond to anyone.
- **Williams:** Our last chef actually works in Richmond at the Quirk Hotel.
- **Peace:** That's a great place, too.
- **Williams:** Yes, it is.
- **Peace:** It's an abundance of riches. Are there any questions of our presenter? Delegate Bulova?
- **Bulova:** Thank you, Mr. Chairman. Just out of curiosity, because we had just leapt from the insurance issue to bed and breakfasts. Do you know any of the ins and outs about why it was so complicated to go through Airbnb's insurance and why they decided to suck it up and do it themselves?
- **Williams:** Well, the owners are in their 80s. And so going online, filling out forms—they're more of a face-to-face type people, so they felt that it was just easier. Their properties are already insured on their own, so they just felt like the damage that was done was less than X dollars, so it was easier for them to just handle it themselves and ask the guest to just not come back. If the property had been burned down or if it was thousands and thousands of dollars, they probably would have taken the time to go through the process. But to them, they just felt it was easier to replace the window and drapes.
- **Bulova:** Understood. So there wasn't any particular roadblock other than just a little bit of time.
 - The second question—and this has nothing to do with insurance. It deals with some of the earlier interplay we had with a state oversight versus local oversight. For a bed and breakfast, obviously they are regulated at the state level. And just

like we're proposing for Airbnb, localities can regulate for zoning and if you don't cut your grass and all that. What kind of access do the localities have with respect to state records on bed and breakfasts? Is that pretty open so that any locality that was interested in enforcement issues or thought somebody might be violating the policies of state regulations, could they go to the state and just have open access to that information, or is there also some privacy with respect to that, like what we're proposing for Airbnb?

- **Williams:** You know, I'm not a hundred percent sure on that. I know if someone has a complaint with the business that they can go to the county. And then if the county can't help them, if they think they're in violation of a noise violation or how many occupancies that we have. If we have over a hundred a people on the property, I know they call the cops and report our properties. But as far as if they want to go and investigate what kind of licensing we have...? We have all of our licenses displayed. All the occupancy and things of that nature are displayed in our properties. So if someone saw it and then felt like we were going against that, I'm sure they could run it up the chain, but I don't know how easily. They could go to their state representative and ask for this information.
- **Hager:** I can help answer that. Amy, from the Bed & Breakfast Association of Virginia. Since I'm the one that verifies every 142 properties' businesses licenses, you can go online and look them up. You just look up the name. It tells you if they've actually filed and paid for their license. That way you can get their address and contact information right there. I think it's Virginia SCC. Right? So it's pretty easy. State Corporation Commission. It's very transparent, to the point that the address, the name that's on the license. The license number as well is there. A lot of my innkeepers, sometimes when they first start out, they have this pile of paperwork. They're like, I'm not for sure what my number is. So I can actually go pull it up for them and give it to them. They appreciate that.
- **Peace:** Good. Mr. Terry, you wanted to add something?
- **Terry:** Delegate Bulova, just to kind of add a little more color to that. Hotels, when we submit our tax requirements, when we file our occupancy taxes, we submit detailed information on who occupied the room and what they paid and all those sort of things. So the hotels are required to submit a pretty detailed bit of information there.
- **Peace:** I had a couple of brief questions. Is there an owner/occupancy requirement to the B&B?
- **Williams:** In the state of Virginia, they don't require that the owner live on the property.
- **Peace:** And your owners are in Florida. Is that right?
- **Williams:** They're in Woodbridge, Virginia.

- **Peace:** Oh, they're in Woodbridge. Okay. I thought I saw something about Florida.
- **Williams:** They do own a property in Florida as well.
- **Peace:** Oh, okay. How many days a year do you hold your properties open for overnight guests?
- **Williams:** Three hundred sixty-five days a year.
- **Peace:** How many people do you employ to manage all these properties?
- **Williams:** With all the different properties, I would say we're less than a hundred. I would say between the 50 and 100 range. It just depends on the time of the year. We have a country club that's looped into hospitality. There is a bed and breakfast on that property as well. Including all the staff it gets a little bit larger, depending on the time of the year.
- **Peace:** So to the layperson, you run your lodging establishments closer to a hotel than a homeowner would be operating on an Airbnb for three nights a year, right?
- **Williams:** Correct.
- **Peace:** Okay. Thank you.
- **Williams:** We're open seven days a week at all the properties.
- **Peace:** Thank you very much. Are there any other questions? Ms. Ragon.
- **Maggie Ragon, Commissioners of Revenue Association:** I'm not sure why we got to share a microphone today. I was trying to figure out which one of us was supposed to be using it or not. Just to answer your question. In terms of localities' access to information through state databases, as commissioners of revenue, we have access to all of the databases that the state uses in terms of taxation, in terms of registration, and also for income tax, for licensing, for LLCs, for the Health Department, DPOR. All of those databases are available to us. So the localities would have the information.
- **Peace:** Thank you very much. Misty Williams, thank you very much for your presentation. Maggie Ragon was the last questioner.

IV. Northern Virginia / Impacts of Short-Term Rentals

- **Peace:** Northern Virginia, Impacts of Short-Term Rentals. I know that at the end of the last meeting, we had a number of people in public comment offer their particular concerns. Many of them, if not all of them, were from what might be defined as Northern Virginia. I think representatives of a couple of the localities said that they would be looking into how they could address some of those concerns. I'm not sure if that has been able to happen yet, but I'm sure it's at least started. We do have Beth

Erickson here again from Visit Loudoun, who gave a very impassioned presentation previously. It was well received. We appreciate you coming back.

- **Beth Erickson**, *President & CEO of Visit Loudoun*: Thank you. It is my pleasure. I will tell you that I am wearing several hats today. In addition to being president and CEO of Visit Loudoun, which is Loudoun County's designated convention and visitors bureau, I am also the president of the Northern Virginia Visitors Consortium, which is comprised of Prince William, Fairfax, Loudoun, Arlington, and Alexandria. So I have conferred with my colleagues on this presentation. The third hat that I will say that I am wearing is that I have been asked to present today to you on behalf of Loudoun County by our county administrator, and have worked with county staff on my presentation as well. So hopefully I have my bases well covered. And I am very pleased to be with you again today.
 - I'll add just a brief moment of context. As you know, because you have heard, Airbnb was launched in 2008. Since then, it has grown to two million listings. This eclipses Marriot International, Intercontinental Hotel, and Hilton Worldwide combined. They have a valuation of \$24 billion. If you have not seen it, it's one of the reasons that I included it in my presentation. It's a little bit soft right there. Penn State just issued a really terrific synopsis and study of the sharing economy, and that's where I'm going to be pulling some of my information as we go forward today.
- **Peace**: Just so everyone recalls from the first meeting—sorry to interrupt—that hotel-sponsored white paper was distributed at the very first meeting. So people have had a chance to read that. Thank you.
- **Erickson**: And I will say that one of the reasons that Penn State was selected is that they have a School of Hospitality, as does Virginia Tech. So it is again one of our stalwart, along with Cornell University, one of our stalwart hospitality industry training grounds, if you will.
 - So I want to talk a little bit about what is a typical Airbnb host. I will tell you that I have researched extensively in Loudoun County, and I'm going to give you three very quick case studies to let you meet some of those in Loudoun County that are indeed Airbnb hosts.
 - The typical Airbnb host, as was stated in the Penn State study, earns about \$5,000 a year, shares less than four nights per month. So I think that fits within [the word] *occasional*. And it fits very closely to what was some of the discussion in our last presentation that we heard in the last session, which is when you look at it from an IRS standpoint, someone can use their dwelling unit as a personal residence and rent it out for fewer than fifteen days and not report the rental income. On the sixteenth day, it becomes a rental property.
 - So I think that this is probably what Airbnb intended when it launched. I will tell you that I had a great opportunity to take a look at this couple. They're from

Sterling. As you can see, they rent one private room there at \$40 a night. Their reviews are lovely. People enjoy them. They are well engaged. They answer back to any of the reviews. They would fall within that category again of the occasional renter.

- As we look at by the numbers, I'm just going to go through very quickly in putting this further into context. Loudoun County has 37 hotels and resorts, everything from extended stays all the way up through a five-star luxury resort. We have approximately 5,700 sleeping rooms. We have 25 B&Bs, which would represent 127 sleeping rooms. And I will tell you how much I would love to have Ashby Inn in Loudoun Country, if we could somehow make that come over just a little bit over the border.
- But I will say Misty brings up something that's very interesting about Loudoun County. For those of you who know my county well, it is divided. You have a very eastern, more of an urban feel. And then you have a rural feel in the back part. So when we're talking about those 127 B&B rooms, the majority of those are in our rural areas.
- Airbnb, I pulled this information on July 11th, and I had a wonderful intern from Virginia Tech who was able to sit there and count every single bedroom that was listed that day on Airbnb. So on that day, we had 473 residential units, which equated to 919 sleeping rooms. Let me point out two things on that. Those 919 sleeping rooms eclipses by seven times the number of traditional B&B rooms we have. When you take a look at it, it is more than 16 percent of our hotel inventory, which is untaxed and unregulated. That is why the Northern Virginia Visitors Consortium and the county sent me down.
- I shared this with you last time, and I'm just going to touch on it very, very briefly because you have it in your notes. What's interesting, I know that Mr. Bradshaw was saying that insurance will put people to sleep. I think data in my matrices could easily put people to sleep. So that's not my intention. My intention is to point out again that data is the new oil. It is the most important asset that we have.
- When I can take a look and go straight across the top, I know how many rooms I have in inventory. I know what my average daily rate is. I know what my occupancy is. At this point when I pulled this—May of this year—my occupancy was at 68 percent throughout the county. I know what my direct revenue projections are based on occupancy and rate. I know my VDOT portion of TOT is, which is two percent, which I mentioned to you last time. There are certain municipalities in Virginia that pay those two percent taxes. Loudoun County is one of them. It goes directly to road improvements in the Northern Virginia area. The other aspect is the five percent TOT projection. This is the information that I use every single year in helping to inform my county's budget. TOT goes to support schools, it goes to support infrastructure. It is a very important aspect of our infrastructure.

- The bottom I'm going to go through very quickly. Again, it was July 11th when I was able to pull this information. What's in white I was able to find online. So I was able to tell how many rooms were in inventory. I was actually able to go through the average daily rate, because they have information through Airdna. You'll see on the bottom. That was my source. But from there, in all honesty, these are my projections. Why? Because everything in gray is not reported. It is not transparent to us. It's not transparent to our municipalities. We don't know what the occupancy is. We can't help with what direct revenue projections would be. And I can tell you that through my algebraic equations, which was enjoyable, I was able to go through and talk about the fact that by not taxing, not being able to really drive this home, we are leaving nearly a million dollars of TOT revenue on the table and about \$372,000 for road improvements.
- I'm going to continue on with that, and I'm going to continue to talk a little bit about short-term rentals in Loudoun County. I would encourage all of us to go and take a look at Airbnb because it's actually a very useable website, very user-friendly. You can find the information that on this day when I pulled the information, which was yesterday, we had rooms that were going for \$10—which again is a shared room, probably a couch or something like that—up to \$1,000 a night. Our average rate that day, on that moment when I pulled it, was \$197. So you have an idea of being able to take a look at a couple of them.
- I pulled the map on the right—again, this is a direct screenshot—to kind of tell you a little bit about when you look at Loudoun County where you're seeing those Airbnb units. They are distributed throughout the entire county.
- My second case study that I'm going to bring forward to you is a site at 20549 Grant Court, Sterling, Virginia. This is the portion of my presentation that I received the most information from my county. When we take a look at what is happening here—I pulled this up because on the map you're going to see there are some gray dots and some red dots because the gray dots were I clicked on things to take a look at them. But what you're going to see is that this is a heavily residential area. Right where you see Potomac Falls, there is a hotel right there, so this is a serviced area. We have hotels on Route 28. We have hotels on Route 7. Again, this is in the Sterling area. For those of you who know her, this is in Supervisor Volpe's district. That's how I also became very involved in this topic.
- At this site in August—this is one of the reasons that I pulled this—there was a report made to the Loudoun County Sheriff's Office. I'm going to go ahead and let you read through this at your discretion, at your leisure, but I'm going to pull out a couple of highlights.
- There were four males that this was rented to that were in town for a construction project. The sheriff received multiple calls starting in early August stating that there were issues with loud noise, off-colored language. They were just creating a public nuisance. They reached out to the Loudoun County sheriff, who in turn triggered Loudoun County zoning to come onboard. I will tell you from the last

time that I was here and the Airbnb representative who talked, talked about self-policing, and talked about Airbnb bringing down different types of renters. I will tell you that the property owner took that step to move forward and removed themselves from Airbnb. The reason that we know this is that not only did they tell us, but the blue arrow shows you the pinpoint that says that that is no longer an Airbnb site. Again, this could be an instance that this was somebody who was occasionally trying it out, found that it did not fit for what they wanted to do, and withdrew the listing.

- But I'm not here today to talk to you about really, truly those types of instances. What I do want to talk to you about are full-time operators. These to me are the top three findings that are key to me and that are important to us. The Washington, D.C., market, of which the Northern Virginia Visitors Consortium is the Washington, D.C., market, ranks only third behind Miami and Los Angeles for multiple units on Airbnb. Again, it's not that nice couple in Sterling who's using their spare bedroom because their children have all gone to college. These are people who have entered a business arrangement. Nearly 30 percent of Airbnb's revenue came from full-time operators. Full-time operators earned about \$140,000 in revenue. Again, this is from the Penn State study.
- The last bullet point when we're talking about those operators that rent out two or more residential properties on Airbnb, while they account for 17 percent of the hosts, they are 40 percent of the revenue. This again is big business.
- As we talked about in the very beginning, there were some that were \$10 a night, some that were \$1,000 a night. So this is my third case study very quickly. This is one of those I wanted to go online to see what I had in my county that was renting for \$1,000 a night.
- The listing is called Charming Estate, and it is listing for \$800 a night, and it is in the Middleburg area. When you go on and you click through on Charming Estate, looking at the Airbnb listing, I'm able to pull some very interesting and very compelling information. The light blue arrow at the top does say that that's \$800 a night. If you go through and read through the house rules, it tells you that there is a two-night minimum. So I can only book that for two nights. It also tells me that it holds up to sixteen guests, which is a bit of a challenge because our zoning ordinances say that no more than four unrelated adults or family members plus two renters can occupy a structure at any time. So already they are not within compliance on zoning.
- Next is I wanted to learn a little bit about Sabrina. Sabrina is the host, and she had wonderful, wonderful reviews, just as the couple did in Sterling. Let me walk you through very quickly what I was able to learn about Sabrina just on this screen. She is from Berryville, Virginia. Berryville is not in Loudoun County. Berryville is not Middleburg. This is not her home; she lives somewhere else. She has seventy-five reviews, and she has been in business since 2014. Seventy-five reviews tell me that at least seventy-five parties have taken the time to write

a review. It has been occupied at least seventy-five times for a two-night minimum. Again, this is not occasional use. These are those that are multiple property owners and business people.

- So the other thing I was able to learn about Sabrina is she's also listing over on the far right another property called Clifton. So Sabrina is listing multiple properties. This is what I'm here to talk to you about today and where we have our greatest concerns.
- Interestingly, I did take this forward a little bit to walk through the process. If Sabrina has rented this out—because again, she has 75 reviews, so I'm saying 75 times rented, two-night minimum—I'm looking at 150 nights at \$800 a night. She's generating about \$120,000 in income. That fits pretty closely and pretty well with what we learned in the Penn State study. If you were to take that and you look at whether or not taxes were paid on that at five percent, \$6,000 in TOT taxes not paid for one property. And its \$2,400 on the two percent not paid to help with infrastructure and transportation in Northern Virginia.
- I wanted to go through one more step to see how could Sabrina post taxes. How would she, if she wanted to, remit taxes? How would she go about doing that? Again, this is from Airbnb, what does a host do to remit taxes? If you determine that you need to collect tax, this is how you can do it. You can do it by looking at it to say that you can put it under a special offer. You can ask your guest to pay it in person, which is really not realistic. Or you can choose to collect the tax outside your listing. Again, this is somebody who is operating as a business, and a profitable business, that is not being held to the same standards as other businesses.
- Interestingly, Mr. Bradshaw had made a very important point talking about insurance that we need to recognize that they are conducting a business. They need to carry a commercial license—not a commercial license, commercial insurance. Certainly Mr. Bradshaw and his colleague know that far more than I do in terms of the intricacies of insurance law. But I will also say that Delegate Peace, you brought up also a very interesting point when you said any at-home business. And I will tell you that I was a consultant working out of my home for ten years. I had a license. I paid my taxes. I was transparent. And I was visible to my county.
- So when we're talking about Airbnb and we're talking about short-term rental—and I think we're already hearing that Airbnb is coming forward and being a good citizen at least in looking at carrying the liability process. We need these folks and these operators to register as businesses and adhere to local zoning and all other regulations. I'll be honest with you. I can't speak for that couple in Sterling, but I will guarantee you that if you tell them that that's what they needed to do, they would have registered, they would have paid their taxes, and they would have been transparent.

- They need to be required to report industry data. And that is not only to the locality, but that's also to the Commonwealth. They need to be taxed like hotel rooms because they are getting the benefit of acting as a hotel room or a B&B without having to pay. Localities need to have transparency regarding the identities of short-term rental providers. That issue that I told you about earlier with Grant Court, there was a lot of consternation back and forth trying to figure out what they were dealing with because they were not able to reach the homeowner.
- I think this is a pivotal time in the discussion, so I so thank you for allowing me to come back and talk to you a little bit about our perspective from Northern Virginia. I think that the time is absolutely right to get this right. I am available for any questions. And if there's anything else I can add to the discussion, it would be my pleasure.
- **Peace:** Thank you very much. Are there any questions or comments? Mr. Mullen.
- **Mullen:** I'll defer to Senator Barker.
- **Peace:** I'm sorry; I didn't see you. I apologize.
- **Senator George Barker:** Representing three of those five Northern Virginia areas in my district, I have particular interest, even though Loudoun is not one of them. To what extent is there an option for the jurisdictions to go after the owners of these to collect the five plus two percent on the taxes now? Are they in any way prohibited or are they empowered to be able to collect those taxes?
- **Erickson:** From what I understand from Loudoun County, because we have discussed this, they are not licensed businesses. So you would need to have the ability to have somebody going through and auditing and knocking on the door and speaking to them. But at this point, that's all we have because they are not required to pay taxes.
- **Peace:** Did you have a follow-up?
- **Barker:** Yes. I understand that these places by and large, if not all, do not seek licenses now to be able to provide that service, so they're not trying to get licensed as a bed and breakfast or a hotel or some other type of entity. But are the jurisdictions prohibited from doing that, knocking on the door and saying you owe us taxes because you're operating something that qualifies under the county ordinances and the state law?
- **Erickson:** Senator Barker, I honestly do not know the answer to that. But I will tell you that one barrier to doing so is that addresses are not listed unless you are booking. So to go through and be able to pull that information right off the website is not easy to do.

- **Peace:** Mr. Flynn and Mr. Rives represent our local government and the mayor. Would you like to take a stab at that?
- **Rives:** Yes. We'd actually looked at that before in working with the commissioners on going from house to house using the platform to find properties. What is it, the juice wasn't worth the squeeze on an individual property was the problem. If somebody really is just renting a residential dwelling unit out a few times, the cost to the commissioner of the revenue or other finance officer to do the work for that just wasn't worth it. The property you had at \$800 a day with a two-day minimum, that's a different animal, of course. And that's probably sort of the exception to what universe we're talking about here. But that was the problem we ran into, the practical side of it. I'm looking at Charlie back here from the commissioners. And as was identified just a few minutes ago, the problem is that until you're actually booking the room itself, you don't really know the address. You could get a field inspector to perhaps get an idea of what it looks like from looking at the pictures on the website and maybe finding it, but that's not a very good way to do your business.
- **Erickson:** And if I may add to that. I think one of the challenges is when we took a look at a few slides earlier; \$197 was the average daily rate for Airbnb in Loudoun County. Our per diem currently is \$97. So this is not an insignificant amount of funding.
- **Peace:** Mr. Mullen.
- **Mullen:** Thank you, Mr. Chairman. Edward Mullen with Reed Smith, representing Airbnb. In answer to the senator's question, the answer really is, yes, tax is owed, and, no, there is nothing keeping the locality—other than logistical difficulties—from collecting. There's no legal impediment to collecting it. The impediment is a logistical one.
 - And, candidly, that logistical impediment was a big reason why we brought forward a bill this year to allow the hosting platform to collect and remit at the state level. As we talked about before, there are logistical impediments on the hosting platform side for doing it at the local level, locality by locality, and subjecting themselves to audits at every locality around the state. The solution offered was to help localities with that logistical hurdle, which is no doubt difficult and which is no doubt why they have not been collecting these to date. There's no doubt that it's owed, and there's no doubt that they have the ability to do it and, furthermore, to enforce regulations that they put on the books as prohibitions or whatever else.
 - One notable thing on the presentation with some of those properties that were noted is that primary residences were all that was implicated by the legislation this past year. Secondary properties were not. So that's one note.
 - Second note, on the business license front, there was a bright-line business license provision in the bill to be a bright line. However, there is an existing

exemption on the business license side for people renting their houses out—or renting their primary residences out. It's § 58.1-3703 C 7. So just as a point of reference, that's not a requirement for primary resident type situations.

- **Peace:** I think further for uniformity statewide. I think that's what our goal is here. There are localities that don't have a BPOL. I appreciate Loudoun probably does when you referenced having your license. You might not have that in Hanover, for example. Yes, Mr. Mayor.
- **Rordam:** Mr. Chairman, Ron Rordam, Blacksburg. I just have one question on the whole discussion of registration and knocking on doors. Maybe Sterling and Mark can help me with this because as I always say in Blacksburg, I'm not an attorney and don't pretend to be one. That exemption of rental property, am I wrong that that really is just a rental of real estate, it's not like a hotel run like we're talking about here for short term. Am I right on that?
- **Peace:** Mark Flynn.
- **Mark Flynn, Gubernatorial Appointee VHC:** That's right. The rental industry, the apartments and all that, that's when it's usually more than thirty days. I think there's one ninety-day in Virginia Beach. But the short-term does not fall into the exclusion from a business license.
- **Rordam:** Just as a follow-up, I think the whole idea of registration, if we know where one of these properties is, that makes it much easier. If they're going through Airbnb, if they have that general part on their form, we can do it. But that would help localities in that if the registration was required. So I think to answer your question, that registration would help a great deal.
- **Erickson:** And if I may build on that. I think one of the issues under registration, the next step is understanding the data. It's one thing to have a property that is registered. It's another to know how many times that was occupied and at what rate. That's how you are able to bring the discussion of taxes into parity. If I were to knock on your door and say you are listed as an Airbnb, I don't know how many times you have rented your property, and I don't know at what rate. So it's very hard for me to collect those taxes. So when it gets down to things that are not worth the squeeze, again I will say we're talking about an area that is gray, and we don't know how juicy that orange is. But at \$197 a night as an average rate, 900 rooms in inventory, that's a pretty good orange.
- **Peace:** I appreciate it. As a member of the Appropriations Committee with a \$1.5 billion shortfall, I would love to know how much tax we would have collected since July 1st had we passed the bill. That would have helped those state employees get pay raises.
 - I know Mark Haskins spent a lot of time trying to define a central mechanism that would make it easier for all localities. Normally, we're telling you what to

do and not giving you any help to do it. This is the funded mandate, I suppose, because we'll be giving you the money if we adopt that mechanism.

- Are there further questions or comments? Yes, Delegate Bulova.
- **Bulova:** Thank you very much, Mr. Chairman. I want to make sure we don't lose sight of the fact that there are kind of two issues with respect to local enforcement. There's the TOT issue. And, quite frankly, from my constituents, the ones they're most concerned about are the quality of life and not commercializing residential areas.
 - I think my question is specifically for Edward. We have several different ways we can engage an enforcement. You have localities, you have the state. And then of course the way that we've set up the draft legislation last year, we kind of rely on Airbnb to do that internally. So clearly Sabrina is potentially breaking the rules. And under the draft statute, she would definitely be breaking the rules. What would happen if a locality went ahead and reported that to you? Let's say every locality was smart enough to hire a summer intern to go through and do that kind of work? Even though that's a little bit of torture, that's what interns are for, right? If a locality reported this to you, what would the consequences be for Sabrina? Would you take her off the platform or how would that work?
- **Mullen:** Mr. Chairman, Edward Mullen with Reed Smith, representing Airbnb. I'm going to take issue a little bit with the premise. I think the local enforcement has always been a part of this process. And currently there's all the enforcement ability in the world for Loudoun to pass ordinances, and if there's a violation of the ordinance, either specifically to short-term rental or general zoning or whatever, go shut the property down.
 - As to the legislation, what it did there was a limited preemption of that as to primary residences in certain situations that you had to qualify for. There were things outside of that like if this is not this woman's primary residence, that would have been left up to existing law, which is the locality can regulate and shut it down if it is able to do that. It's not that the legislation would have prohibited it. It would have left it up to local control as currently exists.
 - So from a premise point, part of the process that we are going through now is to talk about a process whereby these sorts of things can be reported and dealt with. I'll say from a federal law standpoint, you can't make people take things off a platform. So the goal is to get to a point where there is a good reporting mechanism that's verifiable and that's the locality doing the enforcement and reporting up through a channel. That's been done in certain localities around the country where they've set up these frameworks. It's not to my awareness been done at the state level yet. I think part of the conversation that we're having here is on that topic.
- **Peace:** Part of the challenge they have is that they're the only ones here at the table. There are other platforms. So they delist somebody for a year or whatever the time

period, say you have to freeze, you can't participate, they're going to go right to one of these others.

- **Bulova:** And, Mr. Chairman, that was exactly the same thought that I had and I guess what makes me a little nervous with respect to how the law, the draft was set up. We can deal with one entity, an Airbnb. I don't know that any of that is replicable in statute to apply to all those host platforms. I guess that is why I'm concerned that you wouldn't want to maximize the ability of a locality.
 - Again, enforcement is two things. Certainly you're not taking away the ability to enforce, but in order to enforce you have to actually know that a violation is occurring. You can make that very transparent or you can make that very, very difficult to be able to see. So I think that's where the issue is coming down. And you certainly know that.
 - I think the chairman brings up a really good point, which is that we aren't dealing with just Airbnb. That would make things rather simple. We need to be able to replicate this process and the certainty across different host platforms.
- **Mullen:** Understanding that, I think the legislation that was put forward really premised some of the preemptive business on paying taxes—again, I don't have the legislation in front of me—through a limited residential lodging. And qualifying for all of that meant you were doing certain things and certain things that my client wanted to do and expected to do. Other people or other platforms that perhaps didn't do that maybe wouldn't have been entitled to it the way it was set up. There was incentive to do exactly as you suggest.
- **Peace:** Maggie Ragon.
- **Ragon:** Mr. Chairman, Maggie Ragon with Commissioners of Revenue Association. I wanted to just make the points that the localities do have the ability to collect and to go back several years and assess those taxes that have not been collected to this point. The business license and TOT are self-reported by the business owner. The main impediment to us not being able to enforce those rules as opposed to sort of the juice and the squeeze theory is that we really need that registration information from the hosting platforms in order to be able to work with these folks who have not reported to us.
 - For small localities, commissioners of revenue, absolutely. And even for some larger ones, commissioners of revenue, they absolutely have the ability staff-wise and are willing to work with these businesses and do the information collection and tax collection that's needed. That's part of what we're charged with, and that's what we're here to do.
 - Again, the main impediment is knowing where those businesses are operating for those who are not currently reporting to us. But I wanted to make clear that we do have the ability to do that tax collection, and that work is needed.

- **Peace:** Thank you very much. That's why you're here. Yes, Delegate Knight.
- **Delegate Barry Knight:** Yes, sir. I've been sitting here listening a little bit. I think we're kind of close; we just have some problem areas in here.
 - When we craft legislation, sometimes we have to compromise because we are charged with the health, safety, and welfare of our citizens out here. To get to the commissioner's statement, we don't know who they are up there. If they could be localities such as Virginia Beach, these are the rooms that are being rented tonight. If we needed to go because there's a police call, we would know that situation. We would know we could collect the taxes there.
 - We have a short-term working group in Virginia Beach also that's just been appointed. We're trying to get Mr. Mullen on that thing, if he can get permission to add perspective from Airbnb. And we do recognize Airbnb as one of a few hosting platforms. But he's here, so that's why we're picking on him.
 - One thing that I did see today in my mind is I think we need a definition of *occasional*. If we say *occasional* is five times a year or once a month, then maybe if we defined *occasional*, maybe that will set precedent for what your homeowners policy is going to cover. And anything greater than that—and we've got documentation because you all have let us know—the hosting platforms have let us know—needs to have a commercial policy. That's something that's a big thing that we've been talking about today. So let's just define *occasional*, if we can.
 - The other thing that we need to have that we've been getting so many comments from my jurisdiction on, which are Virginia Beach and Chesapeake, is we need to have a level playing field between the hosting platforms, hotels, bed and breakfasts, and vacation homes. Everyone needs to have a level playing field, and that means to go to zoning issues, insurance issues, and payment-of-tax issues. If we can get these things worked out, I think we're well on our way.
- **Peace:** Thank you very much for your presentation, for being here.
- **Erickson:** Thank you. It was my pleasure.

V. Public Comments

- **Peace:** At this point in our agenda, we have public comment. I know that there are folks who are here. It's 3:24 [p.m.]. Our traditional rules on public comment would be limited to three minutes each. I'm not sure if there was a sign-up; I didn't see one. If you want to speak and offer brief public comment, we certainly want to hear that. The lectern is open. Thank you.
- **Phil Kellam, Commissioner of the Revenue, Virginia Beach:** Thank you, Mr. Chairman. My name is Phil Kellum. I'm commissioner of the revenue from Virginia

Beach. Virginia Beach has been proactive in this issue dealing with short-term rentals and with online rental providers. I have prepared a few remarks to talk about an ordinance that we just passed in Virginia Beach—or our governing body just passed.

- In Virginia, a local transient occupancy tax is paid by any person renting lodging. In Virginia Beach that's defined as ninety days or less. The lodging provider is responsible for collecting and remitting the local transient occupancy tax to the locality. Ordinarily, it is my responsibility as commissioner of the revenue to discover local lodging providers by their registration and purchase of a business license. However, a homeowner offering his property for lodging via an online rental provider, such as Airbnb, usually does not require a business license. They are in business, but there is a provision in the state code that may exempt them from that business license.
- I've contacted the online rental provider Airbnb on four occasions over the past year in an official manner to the various departments that would handle these administrative questions, to no avail. And frankly and bluntly, lip service would be an overstatement from the type of correspondence that we've received from Airbnb.
- The current methods of discovery are impractical. You've had some folks point out how we have to kind of pretzel ourselves to find out the information because the street address is not listed on there. In Virginia Beach, we've had some success with that, but not near enough.
- So I worked with the Virginia Beach City Council to develop an ordinance to accomplish three things: One, to raise awareness. Everybody knows about the sharing economy, but everybody really doesn't understand. Everybody thinks it's great that they can go on their phone and order this or order that. But they forget that it is, in fact, a business transaction, in most cases, and it is in direct competition with established businesses. That's disruptive. But it doesn't have to be destructive. So we wanted to raise awareness and begin the discussion in Virginia Beach.
- Next, we wanted to increase compliance. It's been tremendously tough to do that. So we looked around to other localities—I'm about to get beeped off here. May I have a bit of an extension, sir? Okay, thanks.
- We looked at localities around the nation and there are certainly available opinions around the world. But all of them said that to get the attention of these rental providers, you're going to have to have something that is punitive, something that will—there has to be a fine if they're not coming in voluntarily. The law is in place. They are required to collect the TOT from their patrons. But again, I don't have a natural manner of discovery. So the ordinance that we put in place was to increase compliance.

- This is the third and final point, the ordinance was also put in place to gain a credible basis of what's going on out there. We can get various reports from Airdna, KPMG—all kinds of different groups are doing analysis on that. But it's a local tax. The local revenue administrator—in this case the commissioner of the revenue—should be the one that is reporting on this. It is my responsibility to find those businesses and find those people that are subject to the local ordinances that are passed.
- The effect is that this is an evolving industry. I think we all know that. And many of us would like to think that it may disappear. But it is evolving, and it's going to evolve in many ways that I think we don't anticipate. I have an article here that says it's the fastest growing hospitality business in the world. I have another article that says Airbnb is beginning to test service for tourists to book add-on services. Quote, "Our basic idea is I want to go to a city, you feel like you live there." This is the CEO. He said this at an interview with Bloomberg Television. When people go to a place, they want much more than just a home; they want to be part of the neighborhood. What we are really focused on doing is how can we immerse them in the neighborhood.
- Mr. Chairman, you and members of the General Assembly have a lot of questions before you. Mine deals with revenue. But there are solutions here. Delegate Knight and I have had discussions. And I think that there's a practical way to deal with this, whether we collect the tax locally and we receive some engagement from online rental providers or whether they deal with the state.
- The last point I'll make is if they deal with the state directly, we would still need to have the specific information on each home that is rented, not the aggregate information. They're in direct competition with other people that rent bed and breakfasts, that rent homes to licensed real estate agents, and hotels. This is a key element of the Virginia Beach economy. It's a \$30 million revenue stream, just the lodging tax in Virginia Beach. But it's also important to people around Smith Mountain Lake. It's also important to people in other localities. It's an evolving thing for which I think we really need to look for solutions and not just a quick solution. Thank you very much.
- **Peace:** Thank you, Commissioner. I appreciate you being here.
- **Jerry Stokes, Airbnb host, Fredericksburg:** Mr. Chairman, members of this workgroup, my name is Jerry Stokes. I live in Fredericksburg, and I am a host. I note that there are no hosts involved in this process. I think it would have been much more productive if you'd had some of us who are actually experienced at being hosts to be a part of this.
 - My wife and I are retired empty nesters. We have one bedroom, twin beds. We rent it for \$100 a night. Airbnb takes \$3, so we net \$97. Our average is two nights a month. Really small operation. The two, three hundred dollars we get goes toward paying our monthly real estate tax of \$325.

- A lot of the discussion here today has been about situations that have no applicability to us. We live right in downtown Old Town Fredericksburg. We live across the street from George Washington's sister and brother-in-law's place, Kenmore. We live three blocks from Mary Washington's house. People love where we live and staying there. And we are there. We don't walk off and leave other people in our house. There have been no complaints about Airbnb in Fredericksburg in the couple of years it's been operating.
- So I'm here today to encourage the legislation that you passed with maybe some tinkering, but a statewide approach. The reason is this is the onerous package that I got from a Fredericksburg zoning office. Twenty-four pages of hoops I have to jump through. Here is a one-page application from Charlottesville—one page of regulations and one page of directions. The estimate for jumping through the Fredericksburg hoops is four to six months. Charlottesville's requirement is one day to register.
- I have absolutely no objection whatsoever to paying the taxes. I don't mind registering. I don't mind getting a license. I just want consistency across the state, and I don't want to have to go through this kind of process.
- **Peace:** Sir, before you depart, would you restate your name, please, for the record?
- **Stokes:** My name is Jerry Stokes, 600 Lewis Street, Fredericksburg.
- **Peace:** Thank you very much. I think if you could communicate that to your delegate—
- **Stokes:** I have.
- **Peace:** —it might be helpful.
- **Stokes:** I sent the speaker and Senator Rives a package with this.
- **Peace:** Thank you very much.
- **Flynn:** Mr. Chairman, just very briefly. Mark Flynn. I would just note—and maybe Elizabeth could get the article from the Fredericksburg paper today. There was a Dodd family that has an Airbnb in Fredericksburg. They went through a CUP process. I'll send that out.
- **Peace:** I believe the *Freelance Star* did an editorial as well that was in the clips. Among the statements they made was the editorial called for a statewide solution. Thank you. Sorry to impede on your time.
- **Vishal Savani, Savara Properties:** No worries. I'm Vishal Savani. I'm with a company called Savara Properties. We operate the Linden Row Inn right here in

downtown Richmond. I feel privileged here to give you a little bit of a perspective that we have coming from the small inn and boutique hotel industry.

- Our property employs about 20 employees. We last year hosted about 17,000 guests. We remitted over \$250,000 in state and city taxes. The Linden Row Inn is able to compete and grow in Richmond because we operate on a level and legal playing field. We follow appropriate health and safety regulations. We remit taxes according to state and municipal tax codes. And we are constantly exploring new ways to improve the guest experience, promote innovation, drive growth, and increase jobs. But it must be done in a legal manner that safeguards consumers. We're not trying to create bureaucracy or anything like that, but we do feel that there's a need for there to be regulations.
- We support the rights of property owners to occasionally rent their homes to earn extra income, but we share the concerns that local residents have expressed about the growing number of commercial operators who are using sites like Airbnb to run multi-unit, full-time lodging businesses without any oversight. We believe that smart, commonsense short-term rental rules are needed to level the playing field for all types of legal lodging businesses and to protect communities from the growth of illegal hotels that have proliferated in cities such as Richmond, Virginia Beach, throughout the state. It's an important first step towards addressing the growing problem of commercial landlords using platforms like Airbnb to run unregulated, untaxed, and often illegal lodging businesses.
- A recent report on Airbnb's commercial activity in fourteen of the nation's largest cities found that a substantial amount of Airbnb's revenues in those cities, to the tune of \$500 million last year, came from commercial operators or those that operate two or more units for rent on Airbnb. These worrying trends are [unintelligible] places like Richmond where commercial operators are turning residential properties, and in some cases buying them up, no intention of living there, but rather for the sole purpose of renting them out to short-term visitors just like a hotel. Richmond has taken steps to address short-term rentals in the city, making them illegal within the city limits due to zoning restrictions. However, Airbnb and its commercial operators are directly ignoring the laws put in place by the city, and they continue to operate illegally.
- Competition drives our industry, and we welcome new competition from short-term rental platforms, but it must be fair competition. Airbnb and its operators have demonstrated that they cannot act in good faith in Virginia or be a constructive partner in creating smart short-term rental rules for our communities.
- For example, requiring the collection or appropriate taxes is what makes it a level playing field. That's what we do, \$250,000 plus last year. Letting Airbnb decide whether to collect and remit those taxes is not a level playing field. Preemption of local zoning laws, as was sought in the Airbnb-sponsored bill, also violates many protections people across the state enjoy to preserve the character of their

neighborhoods. Public safety, life safety, health safety—all of those things, those need to be abided by as well. As a hotel, we actually have to go through a lot of hoops. And they're all hoops for the safety of our guests.

- In conclusion, we feel that there just needs to be more of a level playing field between operators and the hotel industry. Thank you.
- **Peace:** Thank you very much.
- **Fred Zimmer, Resident, Fairfax County:** Hi. My name is Fred Zimmer, and I live in the Northern Virginia/Mount Vernon area of Fairfax County.
 - While this group seems to be focused mainly on regulation/insurance/taxation for the state, as a homeowner, we have rights, too. This group should study the negative impact this concept brings to most residential R-1 neighborhoods where it exists.
 - I am a 32-year resident of the current home I and my wife raised our two children in. We live in a private middle-class neighborhood within Fairfax County. Most of our neighbors have lived on our quiet dead-end street for the past 25 to 40 years. Last year, a home across the street from us was purchased by a woman with the sole intent of operating an Airbnb. This is not her primary residence and is only there when the Airbnb is not rented.
 - This past February, our neighborhood was introduced to the Airbnb experience firsthand. At seven a.m., our quiet neighborhood was barraged military style by many cars and trucks. Within about an hour, there were four tents constructed in the street, and the trucks were emptied of large lighting and camera equipment. About midday, we were apprised that this was a camera crew filming a Volkswagen commercial. The same venture was repeated again in May.
 - Since February of this year, we have a constant flow of large groups renting this large six-plus-bedroom house. Most groups are averaging around fifteen people. This constant loading and unloading of unknown people is very unsettling and has had a very negative impact on our neighborhood's sense of security and the quality of life that we purchased thirty-two years ago.
 - The term *sharing economy* keeps being thrown around. I would ask anyone who lives next to or near one of these Airbnbs if they think we should be sharing. We should not be sharing our hard-earned way of life with these totally unknown hotel guests. While this group seems to be focused on the regulation, we really should be looking at personal interest. Thank you.
- **Sharon Elswick, Holiday House Bed & Breakfast, Orange:** Hello, my name is Sharon Elswick. My husband and I own the Holiday House Bed & Breakfast in Orange, Virginia. And we are just like Airbnb hosts. We were living in Northern Virginia. We decided we had a dream. We wanted to live in a historic home in a small country

town. And the only way we could do that was by renting out some rooms. We've not become the one percent by owning a bed and breakfast. We very much enjoy it, and it really does help us pay our mortgage.

- Also like many Airbnb hosts, my husband has a full-time job outside of the inn. To become entrepreneurs, we did it legally ten years ago as 30-year-olds. It's not that hard. If we could do it then, lots of folks can do it.
- Becoming entrepreneurs the legal way means following all of those regulations that you all heard about today, running through all those insurance numbers, and learning all about owning a little business. We sometimes experience some very granular regulations. The Health Department can actually tell me when I can bake my cookies for the afternoon. I'm pretty sure my other Airbnb host neighbors are not sitting there with an ABC agent, armed, looking for my paperwork and my inventory to check out booze regulatory issues within my home.
- We are not grouching about the regulations. They're there. This body has passed it, and we believe in it. As entrepreneurs, we have accepted that. It is necessary for transparency. I think that was mentioned a few times today already. It's necessary for our guests, our neighbors, and our community. And we love engaging in our community, investing in our community, in our neighbors, our time and our money.
- Occasional stays have been mentioned a lot, figuring out that magic number. For me as a small six-room inn, it's not that *occasional* that matters to me, it's the preponderance of all the *occasional*. Beth mentioned three times the number of rooms are available on Airbnb than her bed and breakfast in her county. So it's not that Joe Schmo is just renting a few times a year. It's that hundreds of Joe Schmos are renting a few times a year. Without them having to be entrepreneurs and play in the same field that I am, I cannot compete with that. I cannot compete with the time and the money investment. And that's the issue that just a small six-room inn faces.
- If we're all doing the same thing, we all are renting our homes out, rooms in our homes, I don't understand why when we're all doing the same thing that there are two rule books. It doesn't make sense, and that's not something that I can compete with.
- I would love to see a more level playing field. I would love to see Joe Schmo have some regulations that they also have to abide by so that I can compete and that it's not just a historic home that we had to go away from because we also could not pay our mortgage because we did not have a playing field that we could compete in. Thank you.

- **Jack North, *Mayhurst Inn, Orange*:** My name is Jack North. My wife and I own and operate Mayhurst Inn in Orange, Virginia. We know Sharon well. It's good to be back; I was here last month.
 - Here's some new information, if you didn't know this already. The IRS has just put up a website that says, "Here's how you deal with a sharing economy." The amazing part about it is they've already overcome this issue that Virginia is struggling with. They realize they are companies and I quote: "There are tax implications for the companies that provide the services and for the individuals that provide those services." Guys, if it walks like a duck, it quacks like a duck, it's a duck. It's a business.
 - I don't know why Virginia struggles with this. We do the exact same thing as Sharon has just described. We're de facto and de jure businesses. Virginia requires businesses to register. Period. Let's get on with this. Get registered. That makes the entire issue about the impediments to collecting taxes go away. As soon as they require them to be a business, Airbnb can simply put it up on their website. Here's the name, their address, and their business license. Problem solved. You get rid of the entire problem.
 - Airbnb and their hosts need to stop trying to change everything and get on board and simply work with the governments and the communities. And their hosts need to start up and run businesses like businesses. And it's real easy to set up a business in Virginia. Filling out all the paperwork may take you fifteen or twenty minutes.
 - I was personally insulted when the Airbnb presentation last month said to me, as an Airbnb host because I am, that I wasn't sophisticated enough to understand how to fill out the paperwork or file my taxes. Folks, this is the easiest thing in the world. It takes me five minutes a month. I put in three numbers, press Enter, and it computes all that for me. I don't even have to do the high-level math. And it sends it off to the state and pays the taxes. The guy from the Department of the Revenue in Virginia said it was a real complex process. He needs to try this out a couple of times. It's simple.
 - I implore you to wake up, Virginia. A business is a business. Treat it like a business and this entire problem goes away. Thank you.
- **Peace:** Thank you. Welcome.
- **Chris Eudailey, *Virginia Fire Chiefs Association*:** Good afternoon, Mr. Chairman, members of the working group. My name is Chris Eudailey, and I'm here today representing the Virginia Fire Chiefs Association. I have just a handful of points I want to make and share with the group.
 - Because of the lack of registrations of Airbnbs, this could certainly have a negative effect on fire and life safety aspects in each locality. Registration with

local governments is necessary in the event of a fire, emergency medical response, or a law enforcement issue with the arrival of the first responders thinking that a small number of a regular family, maybe a handful of folks are there. Instead we may have three or four times that number of folks that are there.

- Also with the excessive family members or the excessive guests, you may have a number of vehicles that block both the egress and fire hydrants that might be in those areas.
- The Virginia Fire Chiefs Association feels that once an owner begins operating a short-term rental, they are no longer a residential property but a business in a residential setting. Therefore, they should meet requirements, at least those applicable to bed and breakfast inns. This would include safety inspections and building code requirements.
- There have been a number of speakers today that have talked about public safety issues and concerns, from Virginia Beach to others, including local zoning issues. The Virginia Fire Chiefs Association would respectfully request that public safety concerns be added to the next agenda from law enforcement, EMS, and fire standpoints to make sure that the safety and welfare of the folks that stay in those facilities is well addressed. Thank you.
- **Peace:** Thank you, sir. I appreciate your service. Welcome.
- **Don Smith, Resident, Henrico County:** My name is Don Smith. I live in Henrico County, and I live in an area that has about 1,100 homes with 100 acres of common area. We have a lake. We have trails, all that sort of thing. I live in a house that's maybe assessed at a half a million dollars.
 - So I'm out there, and these cars pull in next door to me. There were four cars. There are eight to ten people. There were kids. There were three dogs. They come running across my yard doing their business and chasing my grandkid back into our house. And he didn't come out for the two days that those people were there. Turns out my neighbor leaves the place. He's gone for two days here, one day there, three days here. And he's doing this on a semi-permanent basis, renting it out through Airbnb.
 - I don't think I could sell that place for half a million dollars anymore. That's just the way it is. I've talked to Henrico Animal Control— doesn't work on a 911 basis. There are sexual predator laws that you may or may not be aware of that require people to register if they have a history of that sort of thing. None of that is being taken care of.
 - Did you know that in Austin, Texas, Uber was told that they couldn't operate if their drivers didn't get fingerprinted and bring their criminal history and so forth into view? There are a lot of things like that that are going on that we need to be a part of.

- Some of these other comments that were made just recently here, I'm not going to repeat it because you heard it, but they really strike home. Quality of life is an issue. In my area, there are no sidewalks. The lawns come right down to the street. If you want to walk to the trails, you want to walk through. You have kids on bicycles; you have all this stuff in the street. I live on a cul-de-sac, and these people come around right over the corners and everything else without paying attention. They don't know where they are, really. It's not a good thing. It's just not a good thing. There has to be a compromise in here somewhere.
- My last thought on that is if you call it a business, then in our area, which is HOA, it is helpful because we can control a business. You cannot change covenants that were written forty years ago any easier than you can change the Constitution of the United States. You have to get a lot of people together. You have to get an 80 percent vote. You can't even get 50 percent of Americans to vote after they talked about the election for two years. It wouldn't work for us. But if you call it a business, we can control it. And if you also would put in the legislation that you will allow a board of directors to decide this issue, then we can deal with that as well. A lot of people in this area would be better off. Anyway, you get the point.
- **Peace:** Thank you, sir, appreciate it. Welcome.
- **Edward Denton, Virginia Beach Hotel Association:** Good afternoon, Mr. Chairman, members of the committee. I'm Edward Denton from Virginia Beach. I'm here today somewhat officially in the capacity as a board member for the Virginia Beach Hotel Association. But I am also a homeowner in Virginia Beach. I'm a parent. And I am a licensed real estate broker in the Commonwealth of Virginia, as well as North Carolina.
 - To me, I think this issue has been overcomplicated, candidly. I say that because of this: I've heard a lot of talk around the complexity of the registration process or why it needs to be a statewide issue versus a local issue. At the end of the day, this is a business model, and it's a new way of transacting business. It's been happening in the Commonwealth for decades.
 - I know this about other areas of the law. For example, I wanted to occasionally make money selling real estate. Guess what? I had to go get a real estate license in order to do that. I have a hairdresser who I go to, believe it or not. I'm balding, but I do go occasionally. She happens to live in my neighborhood. She has a business license. She's also been licensed through DPOR. And she has a particular permit that hangs on her wall that allows her to do business out of her home in my neighborhood.
 - So I don't really understand, candidly, what the issue is. I think that at the end of the day, the homeowners ought to be required to register. They ought to be required to follow the same exact laws that bed and breakfasts follow because

that's what they are, people. A transient inn is all it is, and that's been around for a long time. There are laws that exist for it.

- In the case of Airbnb specifically—and I don't think is true for all the online agencies—Airbnb actually collects the revenue, and in my opinion is therefore already legally obligated to remit the taxes because they are collecting the revenue and sending it back to the actual property owner. That's my interpretation of it. So how they've skirted that to date I'm not really clear on.
- I don't think the issue is isolated to Airbnb. I think it's a much broader issue, which really has some very simplistic answers in that they ought to be registered, they ought to go through the same licensing, life safety, tax laws that everyone else goes through in the Commonwealth to conduct business whether as an inn or any other business. Thank you for your time.
- **Peace:** Thank you for coming. Welcome. I believe this will be our last speaker. Thank you.
- **Diana Burke, Virginia Beach Hotel Association:** I think I'm going to be the most popular because I'm going to be the last and hopefully the shortest, which people that know me will say no way, because I talk a lot. But my name is Diana Burke. I'm the executive director for the Virginia Beach Hotel Association.
 - First, I just want to thank everyone that has participated. I've sat through all three of the committee meetings. I've learned a lot of great information. And I just applaud everyone for being here, so thank you for the opportunity. I'm not going to rehash what everyone has already said other than—gosh, I loved the gal from Loudoun County. Where are you? She was very, very informative. Thank you so much.
 - I just want to reiterate if I could get paid by the meeting, I'd be a rich woman. I sit in a lot of meetings in my role, and I'm thrilled to do so. I, too, look at protecting tourism, especially in Virginia Beach. As you can see, it makes a lot of sense. In our area—and I know Phil and Bob and Angie could share—part of our TOT tax goes to designated revenue sources. We refer to it as the tip and the tap fund. It goes to advertising. And the tip is our Tourism Investment Program. A lot of capital investment. We sit back and we analyze data, so data is key for us.
 - So if we do have this wonderful Airbnb market that's coming online, thrilled to have it. Thrilled to have competition, even though the press likes to say we're so against Airbnb. We're not. But we need the data. We need to know who's coming or who's interested in coming to our locality. Without that, we can't make great marketing decisions.
 - And I promised I'd be brief, so I'm going to sum up. We so look forward to this continued collaboration, but I do have to say from our locality we really want to bring this to a decision. And we look forward to the tax remittance. Thank you.

- **Peace:** As do we. Thank you very much. Workgroup, thank you for your patience, for all your questions, your engagement. This was, I think, another robust session. Are there comments from member of the workgroup prior to departure? Mr. Rives.
- **Rives:** I've been pretty quiet today. VACO would like to support the request of the fire safety people. We think public safety is a critical issue that needs to be addressed by the committee. And we would encourage that to be on the next agenda. The state chiefs of police could be invited to participate, but certainly the fire chiefs need to be here.
- **Peace:** Thank you very much. Are there any other comments or input?
 - At this point I think what we'll do is we'll delegate Elizabeth to work with all of us to set the next meeting, which may be—I don't know when we're going to be looking at for the next session, but we don't have one currently set. I'm thinking maybe the first week, third week of October. That would give us enough time to kind of digest this, get some of the information back. I think we're restricted in terms of when we can meet, first and third weeks, I believe. We will look at everyone's calendar and see when we can have the most people present for that and go from there.
 - In the interim, as always, please send your information to Elizabeth through the Commission. In your packets, there were a number of print-offs, letters from citizens, other groups, local governments expressing their particular position on the subject matter. So I ask all the workgroup members to review that public comment, which is contained within your packet and represents comment that was not given orally today.

VI. Adjournment

- Upon hearing no further requests for comment, Delegate Peace adjourned the meeting.